

APPEAL BRIEF

Thomas Spinelli
Attorney for Appellant
Registration No. 39,533

Omnitek Partners LLC
111 West Main Street
Bayshore, NY 11706
(516) 241-4697

TABLE OF CONTENTS

| | | <u>PAGE</u> |
|-------|--|-------------|
| I. | REAL PARTY OF INTEREST | 2 |
| II. | RELATED APPEALS AND INTERFERENCES | 2 |
| III. | STATUS OF CLAIMS | 3 |
| IV. | STATUS OF AMENDMENTS | 3 |
| V. | SUMMARY OF CLAIMED SUBJECT MATTER | 3 |
| VI. | GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL | 7 |
| | A. The Rejection of claims 1-9, on appeal, under 35 U.S.C. § 102(b), as being anticipated by Schuermann et al., is improper | 7 |
| | B. The Rejection of claims 10 and 11, on appeal, under 35 U.S.C. § 103(a), as being unpatentable over Schuermann in view of Poon is improper | 7 |
| VII. | ARGUMENTS | 7 |
| | A. Claims 1 and 7-11 | 7 |
| | B. Claim 2-6 | 8 |
| VIII. | CLAIMS APPENDIX | 8 |
| IX. | EVIDENCE APPENDIX | 12 |
| X. | RELATED PROCEEDINGS APPENDIX | 13 |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant(s): Jahangir S. Rastegar et al. **Examiner:** Ted M. Wang
Serial No.: 10/633,846 **Art Unit:** 2611
Filed: August 4, 2003 **Docket:** 10016
For: LOW-DETECTABILITY
COMMUNICATION BETWEEN
A TRANSMITTER AND RECEIVER
Conf. No.: 5665

Mail Stop Appeal Brief- Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

Pursuant to 35 U.S.C. § 134 and 37 C.F.R. § 41.37, entry of this Appeal Brief in support of the Notice of Appeal filed January 21, 2008 in the above-identified matter is respectfully requested. This paper is submitted as a brief setting forth the authorities and arguments upon which Appellants rely in support of the appeal from the Final Rejection of Claims 1-11 in the above-identified patent application on September 19, 2007.

I. REAL PARTY IN INTEREST

The real party of interest in the above-identified patent application is Omnitek Partners L.L.C.

II. RELATED APPEALS AND INTERFERENCES

There are no pending appeals or interferences related to this application to Appellant's knowledge. See section X.

III. STATUS OF CLAIMS

Claim 1 stands rejected based on 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,198,764 to Schuermann et al., (hereinafter "Schuermann").

Claim 2 stands rejected based on 35 U.S.C. § 102(b) as being anticipated by Schuermann.

Claim 3 stands rejected based on 35 U.S.C. § 102(b) as being anticipated by Schuermann.

Claim 4 stands rejected based on 35 U.S.C. § 102(b) as being anticipated by Schuermann.

Claim 5 stands rejected based on 35 U.S.C. § 102(b) as being anticipated by Schuermann.

Claim 6 stands rejected based on 35 U.S.C. § 102(b) as being anticipated by Schuermann.

Claim 7 stands rejected based on 35 U.S.C. § 102(b) as being anticipated by Schuermann.

Claim 8 stands rejected based on 35 U.S.C. § 102(b) as being anticipated by Schuermann.

Claim 9 stands rejected based on 35 U.S.C. § 102(b) as being anticipated by Schuermann.

Claim 10 stands rejected based on 35 U.S.C. § 103(a) as being unpatentable over Schuermann in view of U.S. Patent No. 6,192,070 to Poon et al., (hereinafter "Poon").

Claim 11 stands rejected based on 35 U.S.C. § 103(a) as being unpatentable over Schuermann in view of Poon.

Claims 1-11 are appealed, a clean copy of which are attached hereto in section VIII.

IV. STATUS OF AMENDMENTS

The claims were not amended in response to the Final Rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present application, U.S. patent application Serial No. 10/633,846 was filed on August 4, 2003, originally included Claims 1-11.

In an Official Action dated December 27, 2006, the Examiner rejected claims 1-1 for the same reasons as set forth in the Final Official Action.

In a Response under 37 C.F.R. § 1.111, filed June 27, 2007, the Applicants respectfully traversed the Examiner's rejections under 35 U.S.C. §§ 102(b) and 103(a) without only an amendment to claims 8, 10 and 11 to overcome an objection to the claims.

In a Final Official Action, issued September 19, 2007, the Examiner reiterated the rejections from the previous Official Action.

Subsequent to the Final Official Action, a Notice of Appeal was filed on January 21, 2008.

Consequently, Claims 1-11 are the claims on appeal. A copy of the rejected claims is attached hereto in section VIII.

The invention with respect to claim 1 comprises a method for low-detectability communication between a transmitter and receiver (see e.g., Figure 1, reference numerals 20 and 30, page 8, lines 14-16), the method comprising: (a) transmitting first data from the transmitter according to at least one of a first timing, modulation, and frequency (see e.g., from page 6, line 23 to page 7, line 3); (b) appending the first data, prior to transmission, with information regarding at least one of a second timing, modulation, and frequency for a subsequent transmission (see e.g., from page 7, line 3 to page 7, line 12); and (c) transmitting second data from the transmitter according to the information (see e.g., from page 7, line 24 to page 8, line 10).

The invention with respect to claim 2 comprises the method of claim 1, wherein the information comprises a change in at least one of the first timing, modulation, and frequency (see, e.g., page 7, lines 5 and 6).

The invention with respect to claim 3 comprises the method of claim 2, wherein the change comprises a random generation of the at least one of the first timing, modulation, and frequency (see e.g., page 7, lines 3 and 4).

The invention with respect to claim 4 comprises the method of claim 1, wherein the information comprises a deviation in at least one of the first timing, modulation, and frequency (see e.g., page 7, lines 4 and 5).

The invention with respect to claim 5 comprises the method of claim 1, wherein the information comprises at least one of the second timing, modulation, and frequency (see e.g., from page 6, line 28 to page 7, lines 3).

The invention with respect to claim 6 comprises the method of claim 1, further comprising repeating steps (b) and (c) for subsequent data sets (see e.g., page 7, lines 13-23).

The invention with respect to claim 7 comprises a transmitter for low-detectability communication with a receiver (see e.g., Figure 1, reference numerals 20 and 30, page 8, lines 14-16), the transmitter comprising: means for transmitting first data according to at least one of a first timing, modulation, and frequency (see e.g., Figure 1 and from page 6, line 23 to page 7, line 3); means for appending the first data, prior to transmission, with information regarding at least one of a second timing, modulation, and frequency for a subsequent transmission (see e.g., Figure 1 and from page 7, line 3 to page 7, line 12); and means for transmitting second data from the transmitter according to the information (see e.g., Figure 1 and from page 7, line 24 to page 8, line 10).

The invention with respect to claim 8 comprises a receiver (see e.g., Figure 1, reference numeral 30, page 8, lines 14-16) for receiving a low-detectability communication from a transmitter, the receiver comprising: means for receiving first data from the transmitter at one or more of a first timing, modulation, and frequency, the first data containing information regarding at least one of a second timing, modulation, and frequency for a subsequent transmission; means for reading the information in the first data; and means for receiving the second data from the transmitter according to the information (see, e.g., pages 6 and 7).

The invention with respect to claim 9 comprises a system for low-detectability communication, the system comprising: a transmitter (see e.g., Figure 1, reference numeral 20, page 8, lines 14-16) comprising: means for transmitting first data from the transmitter according to at least one of a first timing, modulation, and frequency; means for appending the first data, prior to transmission, with information regarding at least one of a second timing, modulation, and frequency for a subsequent transmission; and means for transmitting second data from the transmitter according to the information; and a receiver comprising: means for receiving the first data from the transmitter; means for

reading the information in the first data; and means for receiving the second data from the transmitter according to the information (see, e.g., pages 6 and 7).

The invention with respect to claim 10 comprises a program storage device readable by a computer (e.g., see page 11, lines 13-18), tangibly embodying a program of instructions executable by the computer to perform method steps for low-detectability communication between a transmitter and receiver (see e.g., Figure 1, reference numerals 20 and 30, page 8, lines 14-16), the method comprising: transmitting first data from the transmitter according to at least one of a first timing, modulation, and frequency (see e.g., from page 6, line 23 to page 7, line 3); appending the first data, prior to transmission, with information regarding at least one of a second timing, modulation, and frequency for a subsequent transmission (see e.g., from page 7, line 3 to page 7, line 12); and transmitting second data from the transmitter according to the information (see e.g., from page 7, line 24 to page 8, line 10).

The invention with respect to claim 11 comprises a computer program product embodied in a computer-readable medium (e.g., see page 11, lines 13-18) for low-detectability communication between a transmitter and receiver (see e.g., Figure 1, reference numerals 20 and 30, page 8, lines 14-16) executable by a computer, the computer program product comprising: computer readable program code means for transmitting first data from the transmitter according to at least one of a first timing, modulation, and frequency (see e.g., from page 6, line 23 to page 7, line 3); computer readable program code means for appending the first data, prior to transmission, with information regarding at least one of a second timing, modulation, and frequency for a subsequent transmission (see e.g., from page 7, line 3 to page 7, line 12); and computer readable program code means for transmitting second data from the transmitter according to the information (see e.g., from page 7, line 24 to page 8, line 10).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. The Rejection of claims 2-9, on appeal, under 35 U.S.C. § 102(b), as being anticipated by Schuermann is improper.
- B. The Rejection of claims 10 and 11, on appeal, under 35 U.S.C. § 103(a), as being unpatentable over Schuermann in view of Poon is improper.

VII. ARGUMENT

A. CLAIMS 1 and 7-11

Turning first to the prior art, the same discloses the use of a pseudo noise (PN) code sequence to the signal being transmitted. Thereby receivers will receive a garbled signal. The receiver that has the pseudo noise (PN) code sequence can use it to clean up the signal and get the original data.

In contrast, the claimed invention transmits the actual data, but the data is transmitted in bits and pieces at times determined by a pseudo random number generator, which the receiver that has the code (called the seed) can figure out the time sequence and use only the signal bits and pieces (pulse like) that are received at those times to reconstruct the data sequence. As discussed in the specification, this is good for hiding the signal in the environmental noise, thereby it would be also good for preventing anyone from finding the transmitter (in the field, for example).

The prior art cited by the Examiner discloses a method that generates the random noise and the pseudo noise (PN) code sequence is used to clean, which means that it would be very easy to find the transmitter since it is sending a continuous signal. In addition, in the claimed invention, since only randomly distributed pulses are sent, it is very difficult for anyone to zero in on and locate the transmitter since it is hard to tune to a randomly timed sequence of pulses.

With regard to the rejection of claims 1 and 7-9 under 35 U.S.C. § 102(b), a method, transmitter, receiver and system for low-detectability communication having the features discussed above and as recited in independent claims 1 and 7-9, is nowhere disclosed in Schuermann. Since it has been decided that "anticipation requires the presence in a single prior art reference, disclosure of each and every element of the

claimed invention, arranged as in the claim."1 independent claims 1 and 7-9 are not anticipated by Schuermann. Accordingly, independent claims 1 and 7-9 patentably distinguish over Schuermann and are allowable.

With regard to the rejection of claims 10 and 11 under 35 U.S.C. § 103(a), independent claims 10 and 11 are not rendered obvious by the cited references because neither the Schuermann patent nor the Poon patent, whether taken alone or in combination, teach or suggest a program storage device or computer program product having the features discussed above and recited in independent claims 10 and 11. Accordingly, claims 10 and 11 patentably distinguish over the prior art and are allowable.

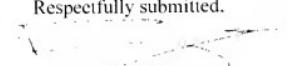
Thus, the rejection of claims 1 and 7-11 under 35 U.S.C. §§ 102(b) and 103(a) are improper and must be withdrawn.

B. CLAIMS 2-6

Claims 2-6 being dependent upon claim 1 are thus at least allowable therewith.

Based on the above arguments and remarks, Appellants respectfully submit that the claims of the instant invention on appeal are not anticipated by Schuermann nor are they obvious in light of the combination of Schuermann and Poon. Consequently, the rejections of the claims based on such references are in error. In view of the remarks submitted hereinabove, the references applied against Claims 1-11 on appeal do not render those claims unpatentable under either of 35 U.S.C. §§ 102 or 103. Thus, Appellants submit that the §§ 102 and 103 rejections are in error and must be reversed.

Respectfully submitted,


Thomas Spinelli

Registration No.: 39,533

Omnitek Partners, L.L.C.
111 West Main Street
Bayshore, New York 11706
(631) 807-9747 (Voice)
(631) 754-1027 (Facsimile)

1 Lindeman Maschinenfabrik GMBH v. American Hoist and Derrick Company, 730 F.2d 1452, 1458; 221 U.S.P.Q. 481, 485 (Fed. Cir., 1984).

VIII: CLAIMS APPENDIX
Application Serial No. 10/633,846

1. (Rejected) A method for low-detectability communication between a transmitter and receiver, the method comprising:
 - (a) transmitting first data from the transmitter according to at least one of a first timing, modulation, and frequency;
 - (b) appending the first data, prior to transmission, with information regarding at least one of a second timing, modulation, and frequency for a subsequent transmission; and
 - (c) transmitting second data from the transmitter according to the information.
2. (Rejected) The method of claim 1, wherein the information comprises a change in at least one of the first timing, modulation, and frequency.
3. (Rejected) The method of claim 2, wherein the change comprises a random generation of the at least one of the first timing, modulation, and frequency.
4. (Rejected) The method of claim 1, wherein the information comprises a deviation in at least one of the first timing, modulation, and frequency.
5. (Rejected) The method of claim 1, wherein the information comprises at least one of the second timing, modulation, and frequency.
6. (Rejected) The method of claim 1, further comprising repeating steps (b) and (c) for subsequent data sets.
7. (Rejected) A transmitter for low-detectability communication with a receiver, the transmitter comprising:
means for transmitting first data according to at least one of a first timing, modulation, and frequency;

means for appending the first data, prior to transmission, with information regarding at least one of a second timing, modulation, and frequency for a subsequent transmission; and

means for transmitting second data from the transmitter according to the information.

8. (Rejected) A receiver for receiving a low-detectability communication from a transmitter, the receiver comprising:

means for receiving first data from the transmitter at one or more of a first timing, modulation, and frequency, the first data containing information regarding at least one of a second timing, modulation, and frequency for a subsequent transmission;

means for reading the information in the first data; and

means for receiving the second data from the transmitter according to the information.

9. (Rejected) A system for low-detectability communication, the system comprising:

a transmitter comprising:

means for transmitting first data from the transmitter according to at least one of a first timing, modulation, and frequency;

means for appending the first data, prior to transmission, with information regarding at least one of a second timing, modulation, and frequency for a subsequent transmission; and

means for transmitting second data from the transmitter according to the information; and

a receiver comprising:

means for receiving the first data from the transmitter;

means for reading the information in the first data; and

means for receiving the second data from the transmitter according to the information.

10. (Rejected) A program storage device readable by a computer, tangibly embodying a program of instructions executable by the computer to perform method steps for low-detectability communication between a transmitter and receiver, the method comprising:

transmitting first data from the transmitter according to at least one of a first timing, modulation, and frequency;

appending the first data, prior to transmission, with information regarding at least one of a second timing, modulation, and frequency for a subsequent transmission; and

transmitting second data from the transmitter according to the information.

11. (Rejected) A computer program product embodied in a computer-readable medium for low-detectability communication between a transmitter and receiver executable by a computer, the computer program product comprising:

computer readable program code means for transmitting first data from the transmitter according to at least one of a first timing, modulation, and frequency;

computer readable program code means for appending the first data, prior to transmission, with information regarding at least one of a second timing, modulation, and frequency for a subsequent transmission; and

computer readable program code means for transmitting second data from the transmitter according to the information.

IX: EVIDENCE APPENDIX

Application Serial No. 10/633,846

There is no evidence submitted by the Appellant in this appeal.

X: RELATED PROCEEDINGS APPENDIX

Application Serial No. 10/633,846

There are no pending appeals or interferences related to this application to Appellants' knowledge.